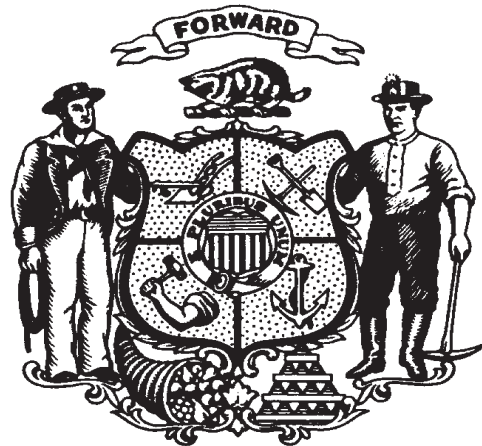


# Wisconsin Administrative Register

No. 685



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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

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### Agriculture, Trade and Consumer Protection (2)

**1. EmR1211** — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Trempealeau County for emerald ash borer.

This rule was approved by the governor on August 30, 2012.

The scope statement for this rule, SS 042-11, was approved by the governor on November 8, 2011, published in Register No. 671 on November 30, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

#### Finding of Emergency

(1) On August 16, 2012, APHIS identified Emerald Ash Borer (EAB) in Trempealeau County, at Perrot State Park. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Trempealeau County but that it will take six

to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of the county to areas of Wisconsin or other states that are not infested with EAB.

(2) DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Filed with LRB:** September 6, 2012

**Publication Date:** September 7, 2012

**Effective Dates:** September 7, 2012 through February 3, 2013

**Hearing Date:** October 12, 2012

**2. EmR1213** (DATCP Docket # 11-R-11) — The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **sections ATCP 55.04 (title), (2) (title), (a) and (b), and (6), 55.07 (1) (a), (2) (a) and (3) (a)**; and to create **sections ATCP 55.02 (4m), 55.03 (2) (f), 55.04 (1m), 55.06 (5) (j), 55.07 (1) (c), (2) (d) and (3) (c)**, relating to allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business.

This rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 005-12, was approved by the governor on January 11, 2012, published in Register No. 673, on January 31, 2012, and approved by the Natural Resources Board on February 22, 2012.

#### Finding of Emergency

The department of agriculture, trade and consumer protection finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

(1) Wisconsin has more than 270 small state-inspected meat establishments that contribute to the vitality of the state's rural economy, producing many unique, specialty products. Wisconsin's state-inspected meat and poultry establishments are inspected by Wisconsin's Bureau of Meat Safety and Inspection under a cooperative agreement with the United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) program. Under the cooperative agreement, state meat inspection programs must provide inspection that is "at least equal to" federal inspection under the Federal Meat Inspection Act (FMIA) (21 USC 661) and the Poultry Products Inspection Act (PPIA) (21 USC 454). State-inspected meat and poultry establishments are prohibited from selling their products in other states.

(2) USDA recently established the new Cooperative Interstate Shipment (CIS) program, which will allow state-inspected meat and poultry establishments to sell their products in other states. To qualify for participation in the CIS program, state meat and poultry inspections programs must inspect establishments that volunteer to participate in the program using procedures that are the "same as", rather than "at least equal to," USDA's federal inspections under FMIA and PPIA. This emergency rule incorporates certain federal regulations that Wisconsin's state meat inspection program



must adopt in order to establish a regulatory foundation deemed the “same as” the foundation for the federal program, and thereby allowing Wisconsin to participate in the CIS program.

(3) The department of agriculture, trade and consumer protection (DATCP) is adopting this emergency rule to prevent a potential hardship to Wisconsin’s state-inspected meat establishments selected to participate in the program; adoption of the emergency rule will ensure that these establishments are not prevented from selling their meat and poultry products in other states because the pending “permanent” rules cannot be adopted in time.

**Filed with LRB:** September 10, 2012  
**Publication Date:** September 13, 2012  
**Effective Dates:** September 13, 2012 through February 9, 2013  
**Hearing Date:** October 15, 18, 19, 2012

### Children and Families

#### *Safety and Permanence, Chs. DCF 37–59*

**EmR1212** — The Wisconsin Department of Children and Families orders the creation of **Chapter DCF 55**, relating to subsidized guardianship.

This emergency rule was approved by the governor on August 28, 2012.

The statement of scope for this rule, SS 040–12, was approved by the governor on June 8, 2012, published in Register No. 678 on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

#### **Finding of Emergency**

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

**Filed with LRB:** August 31, 2012  
**Publication Date:** September 3, 2012  
**Effective Dates:** September 3, 2012 through January 30, 2013  
**Hearing Date:** November 30, 2012

### Children and Families

#### *Early Care and Education, Chs. DCF 201–252*

**EmR1216** — The Wisconsin Department of Children and Families orders the creation of **section DCF 201.04 (2j)**, relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses.

This emergency rule was approved by the governor on October 19, 2012.

The statement of scope for this rule, SS 054–12, was approved by the governor on July 30, 2012, published in Register No. 680 on August 14, 2012, and approved by Secretary Eloise Anderson on August 27, 2012.

#### **Finding of Emergency**

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child’s parent is a child care provider. The prohibition on assistance does not apply if the child’s parent has applied for, and been granted, a waiver. Implementation of an emergency rule specifying the circumstances under which the department or an agency will grant a waiver is necessary to protect certain vulnerable children.

**Filed with LRB:** November 13, 2012  
**Publication Date:** November 15, 2012  
**Effective Dates:** November 15, 2012 through April 13, 2013  
**Hearing Date:** January 14, 2013

### Health Services

#### *Health, Chs. DHS 110—*

**EmR1204** — The Wisconsin Department of Health Services hereby adopts emergency rules to create **section DHS 115.05 (3)**, relating to fees for screening newborns for congenital and metabolic disorders and other services.

This emergency rule was approved by the governor on April 19, 2012.

The statement of scope for this rule, SS 033–11, was approved by the governor on October 25, 2011, published in Register No. 671, on November 14, 2011, and approved by the Department of Health Services Secretary, Dennis G. Smith, effective November 25, 2011.

#### **Exemption from Finding of Emergency**

The legislature by 2011 Wisconsin Act 32, SECTION 9121 (9) provides an exemption from a finding of emergency to adopt these emergency rules. The exemption is as follows:

2011 Wisconsin Act 32, SECTION 9121 (9) CONGENITAL DISORDER TESTING FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under section 253.13 (2) of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 253.13 (2) of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**Filed with LRB:** May 1, 2012

**Publication Date:** May 4, 2012  
**Effective Dates:** May 4, 2012 through September 30, 2012  
**Hearing Date:** May 25, 2012  
**Extension Through:** January 28, 2013

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## Justice

**EmR1217** — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to re–create **Chapter Jus 17 and Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

The statement of scope for these emergency rules was approved by Governor Walker on February 15, 2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

These emergency rules were approved in writing by the governor on December 4, 2012, pursuant to Wis. Stat. s. 227.24 (1) (e) 1g.

### Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced on that date to remain continuously in effect. In order for DOJ to accomplish that goal and comply with all applicable statutory requirements, it is necessary to continuously have in effect administrative rules establishing the procedures and standards that govern the enforcement and administration of those requirements.

Emergency rules governing the licensing process were first adopted on October 25, 2011, and have been continuously in effect since November 1, 2011. The emergency rules were subsequently repealed and recreated with an effective date of March 21, 2012. Pursuant to s. 227.24 (2) (a), Stats., the Joint Committee for the Review of Administrative Rules has authorized the current emergency rules to remain in effect through December 15, 2012.

DOJ is in the process of promulgating permanent administrative rules which, when completed, will replace the emergency rules. On September 5, 2012, the final draft of the proposed permanent rules and accompanying reports were submitted for legislative review, pursuant to s. 227.19 (2), Stats. The permanent rulemaking process, however, will not be completed prior to the anticipated expiration of the existing emergency rules on December 15, 2012. Upon such expiration, DOJ would no longer have in effect administrative rules establishing the procedures and standards that govern the concealed carry licensing program. Any such lack of continuity in the operation of the licensing program would be confusing and disruptive both for license applicants and for DOJ staff administering the program.

The public welfare thus requires that additional emergency rules be promulgated, in order to ensure that there is no interruption in DOJ’s ability to continue to carry out all of its statutory responsibilities in administering and enforcing the concealed carry licensing program. These rules will prevent such a discontinuity and ensure continuous and uniform

operation of the concealed carry program through the time of completion of the permanent rulemaking process that is already under way. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can these emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

**Filed with LRB:** December 10, 2012  
**Publication Date:** December 15, 2012  
**Effective Dates:** December 15, 2012 through May 13, 2013

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## Natural Resources (4)

### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1207** (DNR # WM–03–12(E))— The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (3) (d) 1.**, relating to the bobcat hunting and trapping season.

This emergency rule was approved by the governor on May 4, 2012. This emergency rule, modified to reflect the correct effective date, was approved by the governor on May 25, 2012.

The statement of scope for this rule, SS 009–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on March 28, 2012.

This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2012.

### Finding of Emergency

Pursuant to s. 227.24, Stats., the Department of Natural Resources finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

If emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Therefore, this emergency rule is needed to preserve the public welfare.

**Filed with LRB:** May 30, 2012  
**Publication Date:** June 10, 2012  
**Effective Dates:** October 1, 2012 through February 27, 2013  
**Hearing Date:** August 27, 2012

**2. EmR1210** (DNR # WM–09–12(E))— The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25 and to create sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07**



**(1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65,** relating to the wolf hunting and trapping season and regulations and a depredation program.

This emergency rule was approved by the governor on August 10, 2010.

The statement of scope for this rule, SS 023–12, was approved by the governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

#### **Finding of Emergency**

A non–statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

**Filed with LRB: August 15, 2012**

**Publication Date: August 18, 2012**

**Effective Dates: August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.**

**3. EmR1214 (DNR # WM–02–12(E))** — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u), 10.06 (9) (a) and 10.32,** to amend **section NR 10.01 (1) (v),** and to create **section NR 10.12 (3) (e),** relating to hunting and the 2012 migratory game bird seasons and waterfowl hunting zones.

This emergency rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 011–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on May 23, 2012.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24,

Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Filed with LRB: September 10, 2012**

**Publication Date: September 12, 2012**

**Effective Dates: September 13, 2012 through February 9, 2013**

**4. EmR1215 (DNR # WM–16–12(E))** — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **section NR 10.01 (3) (h) 1.,** relating to the coyote hunting season.

This emergency rule was approved by the governor on August 30, 2012.

The statement of scope for this rule, SS 038–12, was approved by the governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

#### **Finding of Emergency**

A non–statutory provision, Section 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

**Filed with LRB: September 14, 2012**

**Publication Date: October 1, 2012**

**Effective Dates: October 1, 2012 through February 27, 2013**

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## Scope Statements

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### Natural Resources

#### *Fish, Game, Etc., Chs. NR 1—*

#### SS 003–12 [SS 003–13]

(DNR # FH–25–12)

NOTE: This scope statement, SS 003–13, was incorrectly identified as SS 003–12 in Register No. 685B published January 31, 2013.

The statement of scope was approved by the governor on December 28, 2012.

#### Rule No.

Chapter NR 25.

#### Relating to

Commercial fishing trap nets in Lake Superior.

#### Rule Type

Permanent.

#### Finding/Nature of Emergency (Emergency Rule Only)

Not Applicable.

#### Detailed Description of the Objective of the Proposed Rule

The proposed rule change will revise ch. NR 25, Wis. Adm. Code, to define trap net placement locations and commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeleine Island.

#### Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Commercial fishers may currently place trap nets in the Restricted Use Area, described above, for the taking of whitefish or herring from June 1 to August 15. Currently, the only limit on how many nets an individual fisher or all fishers combined may place in this small area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets. Over the last two years, there have been complaints received from sport/recreational anglers about a proliferation of trap nets within this area.

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but excessive use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fisherman setting nets in this area have experienced significant acts of vandalism to their nets with repair costs ranging into the thousands, if not tens of thousands, of dollars. Out of concern for these issues, the Department decided to seek a rule change.

The rule is intended to address the number and placement of trap nets in the Restricted Use Area and possibly when the nets may be placed there. Alternatives will be discussed with the Lake Superior Commercial Fishing Board and local angler groups.

#### Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 29.014 (1), Stats., directs the Department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the Department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the Department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, and designate the kind, size, and amount of gear to be used in the harvest.

#### Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

Approximately 200 hours.

#### List with Description of All Entities that May Be Affected by the Proposed Rule

- State-licensed Commercial Fisherman
- Charter Fisherman
- Recreational Anglers

This rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers. Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but a rule change is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

#### Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

The Department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

#### Anticipated Economic Impact of Implementing the Rule (Note If the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. The Department anticipates a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers.

**Contact Person**

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**Natural Resources*****Environmental Protection — Air Pollution Control, Chs. NR 400—*****SS 002-13**

(DNR # AM-24-12)

The statement of scope was approved by the governor on December 28, 2012.

**Rule No.**

Chapters NR 400, 406, 407, and 445.

**Relating to**

The construction and operation permit programs in chs. NR 406 and 407 respectively and related definitions in ch. NR 400 and hazardous air pollutant control requirements in ch. NR 445.

**Rule Type**

Permanent.

**Detailed Description of the Objective of the Proposed Rule**

The primary objective of the proposed rules is to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act (CAA) and retaining approvability by the U.S. Environmental Protection Agency (USEPA). Specific proposed rules along with issues to be examined in order to accomplish this objective are described below. The Wisconsin Department of Natural Resources (WDNR) may encounter potential opportunities related to this objective which are unforeseen and therefore not described. The WDNR will evaluate and act on such opportunities consistent with the stated objective. Chapters not previously identified, but explicitly associated with proposed changes under chs. NR 406 and 407, could be affected by such an effort.

The WDNR will propose changes to s. NR 445.09 to remove any inconsistencies between methods to demonstrate compliance with both state and federal requirements.

***Specific proposed rules and issues to be examined***

WDNR will propose to satisfy the statutory obligation under s. 285.21 (3), Wis. Stats., to “[p]romulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.” This phrase is used extensively throughout chs. NR 406 and 407, as well as other chapters, but has not been defined.

WDNR is also obligated by statute to establish by rule the actions or events which constitute the reconstruction of a major source and the shutdown of a facility. The terms “reconstruction” and “shutdown” are already defined in s. NR 400.02 (130) and (144), respectively but may not be adequate.

The existing definitions will be examined and changes made, as necessary, to meet the statutory requirements.

WDNR will also propose language changes to ch. NR 406 regarding administrative permit revisions for construction permits. There is language in s. NR 407.11 related to administrative permit revisions for operation permits. Only if requested by the permittee, this language allows WDNR to revise an operation permit administratively for correction of a typographical error; a change in name, address, or telephone number that is unrelated to emissions; more frequent monitoring, recordkeeping, or reporting; a change in ownership or operation control; and revision of an operation permit to include construction permit requirements. There is a need to allow a permit applicant to request similar changes to construction permits, and the WDNR believes making these changes through an administrative process similar to that outlined in s. NR 407.11 is appropriate.

WDNR will propose to remove Table 2, regarding the “Levels of Air Contaminants For Determining Need For Inclusion In Permit Applications for Calendar Years 2003 and Earlier” from s. NR 407.05, as it is out of date and was replaced by Table 3, “Levels of Air Contaminants For Determining Need For Inclusion in Permit Applications for Calendar Years 2004 and Later”.

The evaluation of s. NR 445.09 is necessary to ensure that a facility’s ability to comply with state rules does not result in an inability to comply with federal requirements. An example of federal requirements where this type of conflict exists is 40 CFR 1065 Subpart H. Section NR 445.09 describes fuel requirements for compression ignition internal combustion engines combusting fuel oil. There are types of engines that may be out of compliance with federal requirements if they comply with state requirements. WDNR will propose rule changes to s. NR 445.09 only to the extent necessary to ensure that compliance with s. NR 445.09 does not result in an inability to comply with federal requirements.

In addition to the specific changes WDNR is proposing to make, there are potential changes to chs. NR 406 and 407 that WDNR will explore and evaluate. Through workgroups comprised of internal and external stakeholders, WDNR will evaluate rules to address opportunities that may make more facilities eligible for simplified permitting. WDNR will investigate the possibility and appropriateness of expanding existing exemptions and creating new exemptions that may allow additional minor sources to be exempt from construction permitting. Exemptions that may be examined for expansion include the exemptions in ss. NR 406.04 (1q) and 407.03 (1m) for minor source permitting and the 10 Million British Thermal Unit (MMBTU) thresholds for distillate oil in the exemptions for external combustion furnaces, in ss. NR 406.04 (1) (a) and 407.03 (1) (a). The WDNR may also examine the development of an exemption for incineration of small quantities of pharmaceutical drugs.

In order to simplify permitting in certain situations, WDNR may explore the possibility of re-defining emergency generators in s. NR 400.02 (56) so that the emergency generator exemption in s. NR 406.04 (1) (w) is applied consistently and appropriately in permits. WDNR will examine the criteria in s. NR 406.03 (2) (b), related to undue hardship for a construction permit waiver to ensure consistency with the flexibility believed to be provided by s. 285.61 (5m), Wis. Stats. WDNR is also proposing to examine existing eligibility criteria for registration permits.

Through a retrospective rule review process where each state agency reviewed and took public comment on existing rules, one stakeholder identified a possible permit processing



change. In situations where facilities have an operation permit and want to add an emissions unit that is exempt from construction permitting, the facility is currently obligated to submit operation permit revision forms prior to construction. WDNR may evaluate the possibility of changing the revision submittal date to prior to beginning operation.

**Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

Regarding construction permits, the purpose of ch. NR 406, in part, is described under s. NR 406.01 (2) as necessary “[t]o exempt types of stationary sources from the requirement to obtain a construction permit and to establish permit and permit review requirements and permit duration for construction permits.” The proposals for rulemaking or evaluation related to ch. NR 406 are in accordance with the purpose of the construction permit program.

Regarding operation permits, the purpose of ch. NR 407, in part, is described under s. NR 407.01 (2) as necessary “[t]o establish a schedule of dates for the submission of operation permit applications and a schedule of dates for requiring operation permits for various categories of direct stationary sources and to specify the content of operation permit applications and operation permits. This chapter also sets forth procedures for revising, suspending and revoking operation permits.” The rulemaking and evaluation proposals related to ch. NR 407 are in accordance with the purpose of the operation permit program.

**Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 285.11 (1), Wis. Stats., requires WDNR to, “Promulgate rules implementing and consistent with this chapter and s. 299.15.”

Section 285.11 (14), Wis. Stats., requires WDNR to “Promulgate by rule the actions or events which constitute the reconstruction of a major source.”

Section 285.11 (15), Wis. Stats., requires WDNR to “Promulgate by rule the actions or events which constitute the shutdown of a facility.”

Section 285.21 (3), Wis. Stats., directs that, “The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.”

Section 285.60 (2g) (a), Wis. Stats., requires that the department establish by rule a simplified process under which the department may issue a registration permit authorizing construction or operation or both for a stationary source with low actual or potential emissions. The department shall also “[i]nclude criteria for identifying categories of sources the owners or operators of which may elect to obtain registration permits...”

Section 285.60 (5m), Wis. Stats., both requires and allows the department to promulgate rules allowing for a waiver of construction permit requirements. In the first case, “[t]he department shall promulgate rules under which a person is allowed to commence construction, reconstruction, replacement, or modification of a stationary source prior to the issuance of a construction permit upon a showing that commencing construction, reconstruction, replacement, or modification prior to the issuance of the permit is necessary to avoid undue hardship.” In the second case, the statute provides that “[t]he department may allow a person to

commence construction, reconstruction, replacement, or modification of a stationary source prior to the issuance of a construction permit on a case-by-case basis or on bases specified in a rule.” In both cases, the department may not promulgate rules that conflict with the federal clean air act.

Section 285.60 (6), Wis. Stats., addresses exemption by rule and states in s. 285.60 (6) (a), Wis. Stats., “Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health safety or welfare or to the environment.” Further, s. 285.60 (6) (b), Wis. Stats., states, “Subject to sub. (8), the department shall, by rule, exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare to the environment. And s. 285.60 (10), Wis. Stats., requires that “The department shall continually assess permit obligations imposed under this section and ss. 285.61 to 285.65, Wis. Stats., and implement measures that are consistent with this chapter and the federal clean air act to allow for timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening those obligations, including consolidating the permits for sources at a facility into one permit, expanding exemptions under sub. (6), and expanding the availability of registration permits under sub. (2g), general permits under sub. (3), and construction permit waivers under sub. (5m).”

Section 285.67, Wis. Stats., “The department shall promulgate rules establishing criteria and procedures for revising ...air pollution control permits.”

**Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule**

Approximately 1200 to 1500 hours will be spent by WDNR staff.

**List with Description of All Entities that May Be Affected by the Proposed Rule**

The proposed rule package may affect many different entities. It is difficult to identify specific source categories because this applies to anyone that may need to get a permit or make a determination regarding permit applicability. Many of the rulemaking proposals as part of this package will target minor sources statewide. The proposed changes to chs. NR 406 and 407, could affect any source subject to construction or operation permit requirements and this rule is not specifically targeting types of industry or pollutants. Regarding the proposed changes to s. NR 445.09, the only known sources that will be affected include a small number of engine manufacturers.

**Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule**

WDNR has federally granted authority to implement both the construction and operation permit programs through the State Implementation Plan (SIP). Many of the proposed rules will be more likely to affect minor sources and small businesses. All proposed rules will be consistent with current federal CAA requirements.

**Anticipated Economic Impact of Implementing the Rule  
(Note If the Rule is Likely to Have a Significant  
Economic Impact on Small Businesses)**

The economic impact of the proposed and anticipated rules is expected to be moderate. In most cases, the changes proposed will result in cost savings for business, especially small business.

**Contact Person**

Gail Good, Wisconsin Department of Natural Resources, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, 608 267-0803, [gail.good@wisconsin.gov](mailto:gail.good@wisconsin.gov).

**Nursing**

**SS 004-13**

The statement of scope was approved by the governor on January 4, 2013.

**Rule No.**

Chapter N 9.

**Relating to**

Nurse licensure compact.

**Rule Type**

Permanent.

**Finding/Nature of Emergency (Emergency Rule Only)**

N/A

**Detailed Description of the Objective of the Proposed Rule**

The objective of the proposed rule is to create rules to facilitate and coordinate implementation of the nurse licensure compact.

**Description of the Existing Policies Relevant to the Rule, New Policies Proposed To Be Included in the Rule, and an Analysis of Policy Alternatives**

Wisconsin is a party of the Nurse Licensure Compact. The Nurse Licensure Compact requires the adoption of the uniform rules for facilitation and coordination of the implementation of the Nurse Licensure Compact.

Failure to implement the uniform rules may jeopardize our participation in the Nurse Licensure Compact. The Nurse Licensure Compact allows nurses to practice across state lines. If Wisconsin were removed from the Nurse Licensure Compact, there would be a serious economic impact on the state. In addition, nurses licensed in Wisconsin would be ineligible to practice out of state under their Wisconsin license.

**Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 15.08 (5) (b), Stats. Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 441.01 (3), Stats. ...It [board] shall approve all rules for the administration of this chapter in accordance with ch. 227.

Section 441.50 (6) (d) , Stats. Notwithstanding any other powers, party state nurse licensing boards shall have the authority to do any of the following: Promulgate uniform rules and regulations as provided for in sub. (8) (c).

Section 441.50 (8) (c) , Stats. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under sub. (6) (d).

**Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule**

50 hours.

**List with Description of all Entities that May Be Affected by the Proposed Rule**

Applicants, licensees and health care entities.

**Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to Be Regulated by the Proposed Rule**

None.

**Anticipated Economic Impact of Implementing the Rule**

None or minimal economic impact.

**Contact Person**

Sharon Henes, (608) 261-2377.

**Revenue**

**SS 001-13**

The statement of scope was approved by the governor on December 27, 2012.

**Rule No.**

Chapter Tax 61.

**Relating to**

Lottery retailers.

**Rule Type**

Permanent.

**Detailed Description of the Objective of the Proposed Rule**

The objectives of the rule are to:

- Amend s. Tax 61.08 (11) (h) and (k) to eliminate discretionary authority of the Lottery Administrator that is not provided by law.
- Create a provision in s. Tax 61.08 (13) to allow a retailer's account to be credited for the value paid for instant scratch tickets that have been stolen.

**Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department



initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy.

**Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 565.02 (4) (a), Stats., provides the department may promulgate rules “[i]mplementing the provisions of this chapter.”

**Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule**

The department estimates it will take approximately 100 hours to develop the rule.

**List with Description of All Entities that May Be Affected by the Proposed Rule**

Lottery retailers and other businesses and individuals who rely on clear, current, and concise rules.

**Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Anticipated Economic Impact of Implementing the Rule (Note If the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

No economic impact is anticipated.

**Contact Person**

Dale Kleven, (608) 266-8253.

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# Submittal of Proposed Rules to Legislative Council Clearinghouse

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*Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.*

## **Agriculture, Trade and Consumer Protection** **CR 13-002**

(DATCP DOCKET # 12-R-07)

The Department of Agriculture, Trade and Consumer Protection announces that it has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The statement of scope for this rule, SS 048-12, was approved by the governor on July 6, 2012, published in Administrative Register No. 679 on July 31, 2012, and approved by the Department of Agriculture, Trade and Consumer Protection on August 14, 2012.

### **Analysis**

This proposed rule-making order revises ch. ATCP 134 and relates to residential rental practices.

### **Agency Procedure for Promulgation**

The department will hold a public hearing on this rule on February 22, 2013. The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

### **Contact Person**

Kevin LeRoy, (608) 224-4928.

## **Agriculture, Trade and Consumer Protection** **CR 13-003**

(DATCP DOCKET # 12-R-03)

The Department of Agriculture, Trade and Consumer Protection announces that it has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement for this rule, SS 022-12, was approved by the governor on April 12, 2012, published in Register No. 676 on April 30, 2012 and approved by the Department of Agriculture, Trade and Consumer Protection on May 16, 2012.

### **Analysis**

This proposed rule-making order revises ch. ATCP 49 and relates to the Wisconsin farmland preservation program.

### **Agency Procedure for Promulgation**

The department will hold public hearings on this rule beginning February 14, 2013. The department's Division of Agricultural Resource Management is primarily responsible for this rule.

### **Contact Person**

Alison Volk, (608) 224-4634.

## **Employee Trust Funds** **CR 13-004**

On January 9, 2013, the Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 079-12, was approved by the governor on October 2, 2012, published in Administrative Register No. 682 on October 31, 2012, and approved by the Secretary of the Department, Robert Conlin, on November 15, 2012.

### **Analysis**

The proposed rule revises Chapters ETF 10 and 20, relating to compliance with the Internal Revenue Code by the Wisconsin Retirement System.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on February 13, 2013 at 2:00 p.m. in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The Office of Policy, Privacy and Compliance is primarily responsible for this rule.

### **Contact Person**

Mary Alice McGreevy, Compliance Officer, Office of Policy, Privacy and Compliance

Email: [maryalice.mcgreevy@etf.wi.gov](mailto:maryalice.mcgreevy@etf.wi.gov)

Telephone: (608) 267-2354

## **Natural Resources** **Fish, Game, etc., Chs. NR 1—** **CR 13-005**

(DNR # ER-19-10)

On January 14, 2013, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 652 on April 14, 2010, was sent to LRB prior to June 8, 2011, the effective date of Act 21.

### **Analysis**

This proposed rule-making order revises ch. NR 18 and relates to Wisconsin's falconry code.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on February 12, 2013, at the Fitchburg DNR Service Center. The Bureau of Endangered resources is primarily responsible for this rule.

### **Contact Person**

Sumner Matteson, Bureau of Endangered Resources, (608) 266-1571.

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## Rule–Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

##### CR 13–002

(DATCP DOCKET # 12–R–07)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed rule, chapter ATCP 134, relating to residential rental practices.

DATCP will hold one public hearing at the time and place shown below.

#### Hearing Information

**Date:** Friday, February 22, 2013

**Time:** 9:00 a.m.

**Location:** Board Room (1st Floor)  
Department of Agriculture, Trade and  
Consumer Protection  
2811 Agriculture Drive  
Madison, WI 53718–6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by February 8, 2013, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911; or by emailing [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov); or by telephone at (608) 224–4928. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

#### Availability of Rules and Submitting Comments

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until March 8, 2013 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, or to [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov), or to <http://adminrules.wisconsin.gov>.

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4928 or by emailing [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DATCP’s small business regulatory coordinator Keeley Moll at the address above, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224–5039.

#### Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

##### *Statutes interpreted*

Section 100.20 (1), Stats.

##### *Statutory authority*

Sections 93.07 (1), 100.20 (2) (a), and 704.95, Stats.

##### *Explanation of statutory authority*

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules forbidding trade practices which are determined by the department to be unfair and prescribing trade practices that are determined by the department to be fair.

Section 704.95, Stats. (created by 2011 Wisconsin Act 143) provides that practices in violation of Ch. 704, Stats., may also constitute unfair trade practices or unfair methods of competition under s. 100.20, Stats. This section also restricts DATCP from promulgating rules that change any right or duty arising under Ch. 704, Stats. However, there are a number of rights and duties in the existing rule, which predates 2011 Wisconsin Act 143 (Act 143), that are similar to the new statutory requirement.

##### *Related statutes or rules*

Chapter 704, Stats., regulates transactions between landlords and both residential and non–residential tenants. The department does not administer ch. 704, Stats.

Chapter ATCP 125, Wis. Adm. Code regulates rental transactions for sites upon which the tenant places a mobile home owned by the tenant.

##### *Plain language analysis*

###### *Background*

The department enacted ch. ATCP 134, Wis. Adm. Code, (“the existing rule”) in 1980 and the rule was revised in 1998. The current rule regulates rental transactions between landlords and residential tenants as follows:

- Requires disclosure of rental agreement and earnest money receipts to the tenant.
- Requires disclosures to tenant prior to lease relating to the identity of the landlord, conditions affecting habitability, and utility charges.
- Prescribes procedures for accepting and withholding earnest money fees and credit check fees.
- Prescribes procedures for handling security deposits.
- Prescribes procedures for promises to repair.
- Prohibits a landlord from including in rental agreements provisions that do the following:
  - Authorize unlawful eviction.
  - Accelerate rent payments in event of tenant default.
  - Require the tenant to pay attorney’s fees.
  - Authorize the landlord to confess judgment against the tenant.
  - Relieve the landlord from liability for property damage or personal injury caused by the landlord.

- Impose liability on the tenant for property damage or personal injury not caused by the tenant.
- Waive statutory or legal obligations of the landlord.
- Prohibits a landlord from:
  - Advertising or renting condemned premises.
  - Unauthorized entries.
  - Automatically renewing a lease without notice.
  - Unlawfully confiscating personal property.
  - Engaging in retaliatory or self-help eviction.
  - Charging late rental fees and other penalties not set out in the lease.
  - Misrepresenting the dwelling units offered or the amount of all rent and non-rent charges.
  - Failing to disclose all non-rent charges in connection with the representation of any rent amount.

#### *Rule Content*

The Wisconsin legislature enacted Act 143 on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Confiscating personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

As a result of Act 143, some provisions of the existing rule overlap and conflict with Ch. 704. This rule would modify the current rule to conform to the new statutory requirements.

#### **DISCLOSURES REQUIRED BEFORE ENTERING INTO A RENTAL AGREEMENT**

The current rule requires certain disclosures a landlord must make to the tenant before entering into a rental agreement with, or accepting any earnest money or security deposit from, a prospective tenant. These disclosures relate to conditions affecting habitability.

Act 143 creates s. 704.07 (2) (bm), Stats., which requires disclosures relating to habitability that are similar, but not identical, to the disclosures prescribed by the current rule.

This rule repeals and recreates the required disclosures to make them identical to the disclosures required by statute.

#### **RETURNING SECURITY DEPOSITS**

Under the current rule, if the tenant surrenders the property before the last day of the rental agreement, the landlord must return the security deposit within 21 days after the landlord receives a written notice from the tenant that the tenant has surrendered the premises.

Act 143 creates s. 704.28 (4) (b), Stats., which requires the landlord, if the tenant surrenders the property before the last day of the rental agreement, to return the security deposit within 21 days after the last day of the rental agreement.

This rule amends the requirement to return a security deposit to be identical to the provision of the Act.

#### **WITHHOLDING SECURITY DEPOSITS**

Under the current rule, a landlord may withhold a tenant's security deposit only for specific reasons listed in the rule such as damage to the premises; unpaid rent; unpaid utilities

or assessments that the landlord is liable for unpaid amounts; or other reasons specifically listed in the rental agreement as "nonstandard rental provisions."

Act 143 creates s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the wording of the provisions relating to withholding a tenant's security deposit to conform with Act 143, but does not substantially change the requirements from the current rule.

#### **PROHIBITED RENTAL AGREEMENT PROVISIONS**

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord's attorney's fees in the event of a dispute.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant's control.

Act 143 creates portions of s. 704.44, Stats., which describe prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule makes minor changes in wording related to prohibited rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

#### **CONFISCATING PERSONAL PROPERTY LEFT BEHIND BY THE TENANT**

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

Act 143 allows a landlord to dispose of personal property left behind by the tenant at the landlord's discretion as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule so that provisions relating to abandoned personal property are identical to the statute.

#### ***Summary of, and comparison with, existing or proposed federal statutes and regulations***

Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person's race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.



### ***Comparison with rules in adjacent states***

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These statutes and rules address common topics such as rental agreements, security deposits and other duties of landlords and tenants.

### ***Summary of factual data and analytical methodologies***

This rule modifies the current rule to conform to policies dictated by a change in Wisconsin statutes.

### ***Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis***

DATCP anticipates that the economic impact of this rule will be minimal. This rule makes minor changes to conform to Ch. 704, Stats. This rule also makes changes to the current rule to replace requirements that are no longer enforceable because of changes in Ch. 704, Stats.

### **Effect on Small Business/Initial Regulatory Flexibility Analysis**

#### ***Rule summary***

The Wisconsin legislature enacted Act 143 on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Confiscating personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

As a result of Act 143, some provisions of the existing rule overlap and conflict with Ch. 704. This rule would modify the current rule to conform to the new statutory requirements.

#### ***Disclosures required before entering into a rental agreement***

The current rule requires certain disclosures a landlord must make to the tenant before entering into a rental agreement with, or accepting any earnest money or security deposit from, a prospective tenant. These disclosures relate to conditions affecting habitability.

Act 143 creates s. 704.07 (2) (bm), Stats., which requires disclosures relating to habitability that are similar, but not identical, to the disclosures prescribed by the current rule.

This rule repeals and recreates the required disclosures to make them identical to the disclosures required by statute.

#### ***Returning security deposits***

Under the current rule, if the tenant surrenders the property before the last day of the rental agreement, the landlord must return the security deposit within 21 days after the landlord receives a written notice from the tenant that the tenant has surrendered the premises.

Act 143 creates s. 704.28 (4) (b), Stats., which requires the landlord, if the tenant surrenders the property before the last day of the rental agreement, to return the security deposit within 21 days after the last day of the rental agreement.

This rule amends the requirement to a return a security deposit to be identical to the provision Act.

### ***Withholding security deposits***

Under the current rule, a landlord may withhold a tenant's security deposit only for specific reasons listed in the rule such as damage to the premises; unpaid rent; unpaid utilities or assessments that the landlord is liable for unpaid amounts; or other reasons specifically listed in the rental agreement as "nonstandard rental provisions."

Act 143 creates s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the wording of the provisions relating to withholding a tenant's security deposit to conform with Act 143, but does not substantially change the requirements from the current rule.

### ***Prohibited rental agreement provisions***

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord's attorney's fees in the event of a dispute.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant's control.

Act 143 creates portions of s. 704.44, Stats., which describe prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule makes minor changes in wording related to prohibited rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

### ***Confiscating personal property left behind by the tenant***

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

Act 143 allows a landlord to dispose of personal property left behind by the tenant at the landlord's discretion as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule so that provisions relating to abandoned personal property are identical to the statute.

### ***Small Businesses Affected***

The current rule and the proposed rule regulate transactions between landlords and tenants. Many landlords are small businesses. However, this proposed rule does not have any material effect on any small business. The proposed rule does not change the duties and responsibilities of landlords in



relation to their tenants. Instead, the proposed rule states the duties and responsibilities of the landlord and eliminates inconsistencies between the Ch. 704, Stats., and Ch. ATCP 134, Wis. Admin. Code.

**Reporting, Bookkeeping and other Procedures**

The proposed rule does not create any new reporting, bookkeeping or other procedures for small businesses.

**Professional Skills Required**

The proposed rule does not require any new professional skills by small businesses.

**Accommodation for Small Business**

Many of the businesses affected by this rule are “small businesses.” For the most part, this rule does not make special

exceptions for “small businesses”. The nature of the subject matter does not lend itself to differentiating between types of businesses.

**Conclusion**

This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

**Agency contact**

Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911; email [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov); telephone (608) 224-4928.

<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 134, Residential Rental Practices		
Subject		
Residential Rental Practices		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	20.115(1)(a)	
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Policy Problem Addressed by the Rule
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Ch. ATCP 134, Wis. Adm. Code, was enacted in 1980 and the rule was revised in 1998. The current rule regulates rental transactions between landlords and residential tenants as follows:

- Requires disclosure of rental agreement and earnest money receipts to the tenant.
- Requires disclosures to tenant prior to lease relating to the identity of the landlord, conditions affecting habitability, and utility charges.
- Prescribes procedures for accepting and withholding earnest money fees and credit check fees.
- Prescribes procedures for handling security deposits.
- Prescribes procedures for promises to repair.
- Prohibits a landlord from including in rental agreements provisions that do the following:
  - Authorize unlawful eviction.
  - Accelerate rent payments in event of tenant default.
  - Require the tenant to pay attorney's fees.
  - Authorize the landlord to confess judgment against the tenant.
  - Relieve the landlord from liability for property damage or personal injury caused by the landlord.
  - Impose liability on the tenant for property damage or personal injury not caused by the tenant.
  - Waive statutory or legal obligations of the landlord.
- Prohibits a landlord from:
  - Advertising or renting condemned premises.
  - Unauthorized entries.
  - Automatically renewing a lease without notice.
  - Unlawfully confiscating personal property.
  - Engaging in retaliatory or self-help eviction.
  - Charging late rental fees and other penalties not set out in the lease.
  - Misrepresenting the dwelling units offered or the amount of all rent and non-rent charges.
  - Failing to disclose all non-rent charges in connection with the representation of any rent amount.

Chapter 704, Stats., relating to Landlord Tenant, regulates transactions between landlords and both residential and non-residential tenants. The department does not administer ch. 704, Stats. The Wisconsin legislature enacted Act 143 on March 21, 2012 that made changes to ch. 704, Stats that also affect some provisions of current rule. This rule would modify the current rule to conform to the new statutory requirements.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
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This rule makes minor changes to the existing rule and does not represent any significant shift in policy. It does not pose any significant fiscal or economic impact on specific businesses, business sectors, public utility rate payers, local governments or the state's economy as a whole.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
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***Benefits***

This rule will benefit renters and landlords. Generally, it continues policies that have been in place for a number of years.

***Alternatives***

The passage of Act 143 leaves no real alternative. The newly created s. 704.95, Stats., prohibits DATCP from promulgating rules that change any right or duty described in ch. 704, Stats. There are a number of provisions where the existing rule is similar, but not identical to ch. 704, Stats. If this rule is not adopted, it is questionable that those rule provisions are enforceable. This is significant because DATCP, the Department of Justice, and district attorneys have the authority to enforce ch. ATCP 134 (as an Unfair Trade Practice under s. 100.20, Stats.) but do not have authority to enforce ch. 704, Stats.

Long Range Implications of Implementing the Rule
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There are no long term implications of implementing this rule. This rule modifies the current rule to conform to policies dictated by a change in Wisconsin statutes.

**Compare With Approaches Being Used by Federal Government**

Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person's race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.

**Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These statutes and rules address common topics such as rental agreements, security deposits and other duties of landlords and tenants.

**Comments Received in Response to Web Posting and DATCP Response**

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.

**Notice of Hearing****Agriculture, Trade and Consumer Protection****CR 13-003**

(DATCP DOCKET # 12-R-03)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to create chapter ATCP 49, relating to the farmland preservation program.

DATCP will hold four public hearings at the time and place shown below.

**Hearing Information**

- Date:** **Thursday, February 14, 2013**  
**Time:** 2:30 p.m to 4:30 p.m. and 6:30 p.m. to 8:30 p.m.  
**Location:** Outagamie County Highway Department Conference Room  
 1313 Holland Road  
 Appleton, WI 54911
- Date:** **Thursday, February 21, 2013**  
**Time:** 2:30 p.m to 4:30 p.m. and 6:30 p.m. to 8:30 p.m.  
**Location:** DNR Service Center  
 Conference Rooms 158/185  
 1300 W. Clairemont Avenue  
 Eau Claire, WI 54701
- Date:** **Tuesday, February 26, 2013**  
**Time:** 2:30 p.m to 4:30 p.m. and 6:30 p.m. to 8:30 p.m.  
**Location:** Marathon County UW-Extension Office  
 Conference Room #5  
 212 River Drive  
 Wausau, WI 54403
- Date:** **Thursday, February 28, 2013**  
**Time:** 2:30 p.m to 4:30 p.m. and 6:30 p.m. to 8:30 p.m.  
**Location:** Board Room (1st Floor)  
 Department of Agriculture, Trade and Consumer Protection  
 2811 Agriculture Drive  
 Madison, WI 53718-6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by February 5, 2013, by writing to Alison Volk, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911; or by emailing [alison.volk@wisconsin.gov](mailto:alison.volk@wisconsin.gov); or by telephone at (608) 224-4634. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

**Availability of Rules and Submitting Comments**

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until March 15, 2013 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, or to [alison.volk@wisconsin.gov](mailto:alison.volk@wisconsin.gov), or to <http://adminrules.wisconsin.gov>.

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4712 or by emailing [alison.volk@wisconsin.gov](mailto:alison.volk@wisconsin.gov). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224-5039.

**Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection****Statutes interpreted**

Chapter. 91, Stats.

**Statutory authority**

Sections 91.02 and 93.07 (1), Stats.

**Explanation of statutory authority**

DATCP has specific and general authority to establish rules interpreting and clarifying provisions of ch. 91, Stats., the farmland preservation program. DATCP has general authority for promulgating rules under s. 93.07 (1), Stats., for all of its program areas, and under s. 91.02 for the administration of ch. 91, Stats. Under s. 91.02 (1), DATCP has specific authority to set forth technical specifications for

farmland preservation zoning maps under s. 91.38 (1) (d), Stats. DATCP has specific authority under s. 91.02 (2), Stats., to identify additional uses that would qualify as accessory uses, agricultural uses, agriculture–related uses, and base farm tracts. DATCP also has specific authority under s. 91.02 (2), Stats., to specify requirements for certifications of farmland preservation plans under s. 91.18 (1) (b), Stats., as well as farmland preservation zoning ordinances under s. 91.38 (1) (i), Stats. Section 91.02 (2), Stats., also gives DATCP specific authority to require information in an application for certification of a farmland preservation plan or amendment under s. 91.20 (4), Stats., or zoning ordinance under s. 91.40 (5), Stats., and to specify the types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats. DATCP has authority under s. 91.02 (2), Stats., to authorize additional uses in a farmland preservation zoning district under s. 91.42 (4), including additional uses allowed as permitted uses under s. 91.44 (1) (g), Stats., and as conditional uses under s. 91.46 (1) (j), Stats. Finally, DATCP has the authority under s. 91.02 (2), Stats., to require information in an application for a farmland preservation agreement under s. 91.64 (2) (h), Stats.

#### ***Related statutes and rules***

Chapter 91, Stats., governs the state’s farmland preservation program. Landowners who participate in the zoning or farmland preservation agreement provisions of the program are eligible for farmland preservation tax credits under s. 71.613, Stats. Under ss. 91.80 and 91.82, Stats., landowners claiming those tax credits are required to comply with soil and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats. Those standards are found primarily in ch. ATCP 50, Wis. Adm. Code, as well as the Department of Natural Resources performance standards under ss. NR 151.02 to 151.08, Wis. Adm. Code.

#### ***Plain language analysis***

##### ***Background***

Wisconsin’s Farmland Preservation Program (FPP), ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. Chapter 91, Stats., was updated to acknowledge the growing pressures on farmland across the state and to curb the increasing conversion of farmland out of agricultural use.

The farmland preservation law requires all counties to update their farmland preservation plans before January 1, 2016. The farmland preservation planning process ensures that local governments evaluate the agricultural land within their boundaries and consider the role that agriculture plays in their local economy. Counties must submit farmland preservation plans to DATCP for certification. In order to be certified by DATCP, the plan must meet certain requirements under ch. 91, Stats. Once a plan is certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the FPP.

One such part of the FPP is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Similar to farmland preservation plans, zoning ordinances must also be submitted to the department for certification. To be certified, the ordinance must meet certain requirements under ch. 91, Stats. The certification process ensures that only compatible uses are allowed in the farmland preservation district to limit pressures on active agriculture created by the

presence of incompatible uses. Once certified, landowners are eligible to claim farmland preservation tax credits.

Another component of the FPP is the farmland preservation agreement. Under ch. 91., Stats., any new agreement must cover land located in a landowner–initiated and state–designated Agricultural Enterprise Area (AEA). Landowners with farmland preservation agreements are eligible to collect farmland preservation tax credits. By clustering agreements in areas that are primarily devoted to agricultural use, farmland can be better protected because a concentration of agriculture provides landowners with the confidence that the surrounding land will remain in agriculture. This confidence encourages landowners not only to continue farming, but to make additional investments in their agricultural operations.

#### ***Rule Content***

##### **GENERAL**

This rule does all of the following:

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies information required in an application for a farmland preservation agreement under s. 91.64 (2) (h), Stats.

##### **DEFINITIONS**

This rule:

- Clarifies types of uses that may be listed by a political subdivision as accessory uses and agriculture–related uses.
- Defines crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

##### **FARMLAND PRESERVATION PLANS**

This rule:

- Clarifies that a county has one year after the expiration date to have its farmland preservation plan certified by the department.
- Clarifies when counties may request an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and zoning efforts that may be occurring in the county.
- Clarifies that any amendment to a certified farmland preservation plan must be submitted to the department for certification.
- Clarifies that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county’s comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.



## FARMLAND PRESERVATION ZONING

This rule:

- Clarifies that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive, or more restrictive, than the density standards under ch. 91, Stats.
- Describes the types of uses that would qualify as governmental, institutional, religious, or nonprofit community uses.
- Clarifies that an ordinance expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has a year after the expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to collect farmland preservation tax credits.
- Clarifies that local governments may request an extension to the expiration of their farmland preservation zoning ordinance to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

## FARMLAND PRESERVATION AGREEMENTS

This rule:

- Requires landowners to include in an application for a farmland preservation agreement those lands that the landowner owns yet intends to exclude from coverage under the agreement.

### *Summary of, and comparison with, existing or proposed federal statutes and regulations*

There are no federal regulations or statutes related to this rule.

### *Comparison to rules in adjacent states*

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers voluntarily to enter into a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, however the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners that are located within these areas may then place a restrictive covenant on their land, agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

### *Summary of factual data and analytical methodologies*

To develop this rule, DATCP consulted a group of stakeholders familiar with and potentially affected by the provisions of the rule. DATCP also collected feedback from local government officials who had experience working with, understanding, and implementing the farmland preservation law.

### *Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis*

This rule will have a generally positive impact on agriculture-related businesses. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that the impact of agriculture-related business can be measured within the community. By clarifying this requirement in the planning process, the rule may aid communities in accurately capturing the breadth of agriculture-related businesses within the area.

This rule also clarifies farmland preservation zoning standards, encouraging local governments to include agriculture-related enterprises in the zoning district. Most agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agriculture-related use or an accessory use. Though such businesses may or may not collect tax credits, their presence in the district may add additional economic certainty to farmers within the certified farmland preservation district.

There are currently over 15,000 farm owners on approximately 2.8 million acres of farmland claiming farmland preservation income tax credits. There is a statutory cap of \$27 million for tax credits claimed for lands subject to farmland preservation zoning.



## Effect on Small Business /Initial Regulatory Flexibility Analysis

### Rule Summary

This rule interprets the Wisconsin Farmland Preservation Program administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”). Among other things, this rule does all of the following:

#### GENERAL

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies information required in an application for a farmland preservation agreement under s. 91.64 (2) (h), Stats.

#### DEFINITIONS

- Clarifies types of uses that may be listed by a political subdivision as accessory uses and agriculture–related uses.
- Defines crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

#### FARMLAND PRESERVATION PLANS

- Clarifies that a county has one year after the certification expiration date to have its farmland preservation plan certified by the department.
- Clarifies when counties may request an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and zoning efforts that may be occurring in the county.
- Clarifies that any amendment to a certified farmland preservation plan must be submitted to the department for certification.
- Clarifies that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county’s comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

#### FARMLAND PRESERVATION ZONING

- Clarifies that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single–family nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive, or more restrictive, than the density standards under ch. 91, Stats.
- Describes the types of uses that would qualify as governmental, institutional, religious, or nonprofit community uses.

- Clarifies that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has a year after the certification expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to collect farmland preservation tax credits.
- Clarifies that local governments may request an extension to the expiration of their farmland preservation zoning ordinance to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision’s farmland preservation zoning ordinance and the county’s farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

#### FARMLAND PRESERVATION AGREEMENTS

This rule:

- Requires landowners to include in an application for a farmland preservation agreement those lands that the landowner owns yet intends to exclude from coverage under the agreement.

#### *Small Business Affected*

This rule will have a generally positive impact on agriculture–related businesses. This rule affects businesses in the following ways:

#### FARMLAND PRESERVATION PLANS

- As part of the farmland preservation planning process, ch. 91, Stats., counties are required to describe the rationale used for determining the farmland preservation area. This rule clarifies that the rationale must be based on objective criteria related to characteristics of the land parcels themselves, including the proximity of parcels to agricultural infrastructure and the historical use of the land for agriculture–related purposes. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture–related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that agriculture–related businesses can be measured within the community and aid counties as they continue to plan for the presence of these businesses.

#### FARMLAND PRESERVATION ZONING

- Chapter 91, Stats., allows a political subdivision to locate accessory and agriculture–related uses within a certified farmland preservation district. This rule clarifies the types of uses that may be considered accessory and agriculture–related.
- Accessory uses, under the rule, include facilities for storing, processing, selling, and housing agricultural products. Such uses primarily support agricultural activities occurring on the farm. These uses can make

it possible for a farm to generate income through direct-to-consumer sales, such as a roadside farm, or can add value to a product produced on the farm, such as a cheese processing facility. The rule also clarifies that an accessory use can include those uses that may generate income yet do not conflict with (or may be enhanced by) the farm operation. Listed uses include crop mazes, agricultural tourism, and you-pick operations. The clarification of accessory use facilitates the inclusion of agricultural businesses, particularly small agricultural businesses, within the farmland preservation district.

- The rule also clarifies that agriculture-related uses include facilities that support agriculture even though the use itself may not be located on a farm. Such uses include facilities that primarily provide agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or other agricultural services directly to farms. These uses also include manure digesters, facilities that slaughter livestock, and agricultural processing plants. The rule clarifies that political subdivisions may include within a farmland preservation zoning district businesses that support agriculture. Allowing such businesses to locate within a farmland preservation district helps provide these businesses with a potential customer base and may add additional economic certainty to farmers with land in the certified farmland preservation district.

**FARMLAND PRESERVATION AGREEMENTS**

- This rule requires landowners who submit an application to the department for a farmland preservation agreement to include in the application all lands owned within an Agricultural Enterprise Area that will not be covered by the agreement. This requirement ensures that landowners claiming tax credits under the agreement will not reserve land for purposes that conflict with the preservation of farmland. This in turn provides added certainty to neighboring farmers that conflicting uses will not threaten the continued agricultural production on their land.

**Reporting, Bookkeeping and other Procedures**

The proposed rule does not regulate any small businesses and thus there are no reporting, bookkeeping or other procedures in the proposed rule for small businesses.

**Professional Skills Required**

The proposed rule does not regulate any small businesses and thus there is no profession skill required for small businesses.

**Accommodation for Small Business**

Many of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for small businesses because the farmland preservation program encompasses agricultural operations of all sizes.

This rule includes provisions that will benefit large and small businesses alike. For example, this rule:

- Requires counties to consider agricultural businesses, regardless of size, when determining which lands to plan for farmland preservation.
- Clarifies that certain activities that support and enhance agricultural uses may be located within a farmland preservation zoning district. These activities may include supplemental business ventures that can help support a small agricultural operation, such as agricultural tourism or seasonal activities.

**Conclusion**

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

**Agency Contact**

Alison Volk, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911; email [alison.volk@wisconsin.gov](mailto:alison.volk@wisconsin.gov); telephone (608) 224-4634.

<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 49, Farmland Preservation		
Subject		
Wisconsin Farmland Preservation Program		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs

The Rule Will Impact the Following (Check All That Apply)	
<input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Policy Problem Addressed by the Rule	
<p>Wisconsin's farmland preservation program, ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. There are no rules in effect related to the farmland preservation program. This rule is necessary to provide clarity to counties updating their farmland preservation plans, local governments writing farmland preservation zoning ordinances, and landowners applying for farmland preservation agreements.</p> <p>The rule does all of the following:</p> <ul style="list-style-type: none"> <li>• Creates ch. ATCP 49.</li> <li>• Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.</li> <li>• Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.</li> <li>• Specifies types of ordinance amendments for which certification is required under s. 91.36(8)(b)3, Stats.</li> <li>• Authorizes additional uses allowed in a farmland preservation zoning district.</li> <li>• Specifies information required in an application for a farmland preservation agreement under s. 91.64(2)(h).</li> </ul>	
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)	
<p>This rule will not have any significant negative economic or fiscal impact on businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole and does not create additional requirements that local governments must follow. Chapter 91, Stats., requires all counties to update their farmland preservation plans before January 1, 2016. Implementing the plan through farmland preservation zoning is optional for local governments. This rule provides additional clarity to the requirements under ch. 91, Stats., for completing a farmland preservation plan and a zoning ordinance for those local governments that choose to adopt one. Added clarity will make the certification process of farmland preservation plans and zoning ordinances easier for local governments to understand and complete, and faster for the department to review. This will decrease the overall number of local government and state staff hours necessary to complete the planning and zoning process.</p> <p>This rule will have a generally positive impact on agriculture-related businesses. This rule clarifies farmland preservation zoning standards, encouraging local governments to include agriculture-related enterprises in the zoning district. Most agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agriculture-related use or an accessory use. Though such businesses may or may not collect tax credits, their presence in the district may add additional economic certainty to farmers within the certified farmland preservation district.</p>	
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule	
<p>This rule will clarify statutory requirements, which will alleviate costs at both the state and local level. With added clarity in requirements for planning and zoning certification, local government staff will require less time to complete farmland preservation plans and ordinances while staff at the state level will require less time to review these plans and ordinances. Clarity in the farmland preservation zoning standards may also encourage additional agriculture-related businesses to be included within the farmland preservation zoning district, creating added stability for these businesses fostering agricultural economic development within the district.</p> <p>If DATCP does not adopt this rule, counties, towns, and municipalities will continue to update their farmland preservation plans and ordinances; however, these local governments would fail to benefit from the clarity and direction that this rule could provide. This lack of clarity may result in added staff time at both the local and state level.</p>	
Long Range Implications of Implementing the Rule	
<p>Long-term, implementing the rule will benefit local governments, agriculture-related businesses, and agricultural producers. Plans and ordinances are required to be updated at a minimum of every ten years. As a result, this rule will provide needed clarity to local governments both now and into the future. Further clarification of farmland preservation zoning standards will also build certainty for agriculture-related businesses and agricultural producers that activities supporting agricultural operations will be allowed within the certified district.</p>	

Compare With Approaches Being Used by the Federal Government

There are no federal regulations or statutes related to this rule.

Compare with Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers to voluntarily enter in a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, however the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners who are located within these areas may then place a restrictive covenant on their land agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long-term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

Comments Received in Response to Web Posting and DATCP Response

The department received comments related to the economic impact of this rule from the Wisconsin REALTORS Association and the Wisconsin Builders Association. Each comment is listed below followed by DATCP's response. After reviewing the comments, DATCP has determined that they do not alter the economic impact analysis of ATCP 49. The comments either relate to the impact of ch. 91, Stats., regardless of the presence of an administrative rule or the comments address specific language within the rule itself. As a result, DATCP has encouraged both the Wisconsin REALTORS Association and the Wisconsin Builders Association to submit their comments either orally or in writing during the rule-making hearing period.

**1. Analysis of impact on small businesses is inadequate** — The small business impact analysis on pp. 5–6 is inadequate given that it focuses exclusively on agriculture-related business. The analysis does not consider the impact on non-agriculture-related businesses, such as real estate development related businesses. Accordingly, the scope of the analysis should be expanded to include all small businesses.

*ATCP 49 will not impact other small businesses such as real estate development related businesses. The rule does not mandate that additional land should be unavailable for development. Instead, the rule clarifies that certain businesses may be included in a certified farmland preservation zoning district. These businesses are necessarily agricultural-related or are incidental to the agricultural use of the farm. As a result, the rule does not impact real estate development related businesses any further than ch. 91, Stats.*



**2. Housing impact statement requirement not met** — Section 227.115 of the Wisconsin Statutes requires the Department of Administration to perform a housing impact report on any administrative rule that affects, among other things, the cost of housing or cost of constructing, rehabilitating, improving or maintaining single family or multifamily dwellings. Because ATCP 91 likely has an impact on the cost of housing by limiting the supply of developable land, a housing impact statement should be prepared as part of the administrative rulemaking process.

*ATCP 49 does not limit the supply of developable land any further than ch. 91, Stats. The rule clarifies that the rationale in the farmland preservation plan must be based on objective criteria related to characteristics of the land. One such characteristic is whether the land is under some development pressure even if the land is not located in an area the county plans for development in the next 15 years. Applying such objective criteria would not limit the supply of developable land because the county could use this determination as a reason for excluding this land from the farmland preservation area. Moreover, the farmland preservation plan itself does not limit whether land may be used for nonagricultural development. The farmland preservation plan is meant to guide future land use decisions, but it is not by itself a land use restriction.*

*ATCP 49 also requires that a farmland preservation zoning ordinance zones at least 80% of the land that is planned for farmland preservation. The process of farmland preservation planning and then zoning means that the local government has first looked at the land and determined what areas are likely to remain in agricultural use. The 80% zoning requirement then ensures that the local government is treating all agricultural landowners within its jurisdiction equally. If the county has undergone the planning process, then the land that is planned for farmland preservation has already been determined to not be available for development. Thus the 80% rule would not be removing any lands from the pool of lands with the potential to be developed.*

**3. Application of the “under some development pressure” standard** — With respect to ATCP § 49.12(1)(a)(5) on page 13, lines 9–10, we are not clear on how DATCP will apply the “under some development pressure” standard. If the land is “under some development pressure,” should the land be included or excluded from the farmland preservation plan? If the land is under development pressure, the land arguably should be planned for nonagricultural development within the next 15 years and, thus, should not be included in the farmland preservation plan. Moreover, whether land is under some development pressure should not be relevant to the issue of whether it is good farmland.

*This comment addresses the clarity of suggested rule language, not the potential economic impact that the rule will have. Consequently, it would be more appropriate to comment on this rule provision during the public hearing period. It should perhaps be noted that leaving the language as it is in the rule would enable counties to treat development pressure either way it chooses. Perhaps a county feels that the presence of some development pressure means that the land is appropriate to be included in the farmland preservation area for now, because inclusion means that the county has some tools available to try to steer development away from this sensitive area. Perhaps another county feels that the presence of even some development pressure makes the likelihood of conversion out of agricultural use too great for the land to be included in the farmland preservation area. Either way, the rule language allows the county to make this determination. The criterion fundamentally emphasizes the need to pay attention to factors at work on the land itself and not primarily the wishes of individual landowners.*

**4. Failure to consider city and village comprehensive plans** — With respect to ATCP § 49.12(1)(a)(6) on page 13, lines 11–12, this provision requires counties to consider future nonagricultural development and incompatible uses as determined by the county and town comprehensive plans. However, this provision does not require counties to consider nonagricultural development and incompatible uses identified by village and city comprehensive plans. Because comprehensive plans of cities and villages also contain projections for future nonagricultural development and possible uses that are incompatible with agricultural uses, the comprehensive plans of cities and villages should also be considered.

*This comment is also more appropriate for the public hearing period because it addresses the substance of the rule itself instead of any potential economic impact that this provision of the rule will have. A request could be made to change the provision to include the comprehensive plans of cities and villages. Whether the department can or should include such language would need to be evaluated after all of the public comments have been collected.*



**5. Areas to be included in farmland preservation zoning district** — With respect to ATCP § 49.25(2) on page 18, lines 22–23, this provision requires at least 80% of the area planned for farmland preservation to be included in the farmland preservation district or a district that imposes land use regulations that are at least as restrictive as the farmland preservation zoning district. Is this requirement found in Chapter 91 of the Wisconsin Statutes or some other statute? If not, where does it come from?

*This question also does not relate to the economic impact of the rule. Any comment regarding the 80% threshold should be made during the public hearing period. We have historically used 80% as a guideline and it is a threshold to which many zoning authorities are already accustomed. Chapter 91 uses the term “substantially consistent.” We know that this is much greater than 50%, but not quite 100%. To give local governments additional guidance, we have chosen to codify the already-recognized 80% guideline.*

## Notice of Hearing

### Employee Trust Funds

#### CR 13–004

The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to amend administrative rules s. ETF 10.01 (3i) and 10.65 and to create ss. ETF 10.65 (Note), 10.86, 20.0251, and 20.0251 (Note) to clarify how ETF complies with applicable provisions of the Internal Revenue Code (IRC).

A public hearing on the proposed rule will be held.

#### Hearing Information

**Date:** Thursday, February 13, 2013  
**Time:** 2:00 p.m.  
**Location:** Conference Room GB  
 Offices of the Department of Employee Trust Funds  
 801 West Badger Road  
 Madison, WI 53713

Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

#### Place Where Comments Are To Be Submitted and Deadline for Submissions

Comments may be submitted to the contact person no later than 4:30 p.m., Wednesday, February 20, 2013. The public hearing will be held at 2:00pm on Wednesday, February 13, 2013 in conference room GB of the Wisconsin Employee Trust Fund building at 801 W. Badger Rd, Madison, WI 53713.

#### Free Copies of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707–7931. The telephone number is: (608) 266–1071.

#### Analysis Prepared by the Department of Employee Trust Funds

##### *Statutes interpreted*

Sections 40.015, 40.03 (1), (1) (am), 40.31, 40.32, Stats., relating to compliance with the IRC.

##### *Statutory authority*

Sections 40.03 (1) (am), (2) (i) and (t), and 227.11 (2) (a) (intro), 1. to 3., Stats.

#### *Explanation of agency authority*

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

The ETF Secretary is also required by statute to ensure that the WRS maintains compliance with the Internal Revenue Code (IRC) as a qualified plan for tax purposes and each plan is administered in compliance with the code. Numerous provisions in Chapter 40 require ETF to comply with the internal revenue code.

This rule is subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The statement of scope for this rule was approved by the Governor on 10/2/12 and published in Register No. 682 on 11/01/2012.

#### *Related statutes or rules*

There are no other relevant statutes or rules that are related to WRS compliance with the IRC that are not addressed in this rule.

#### *Plain language analysis*

*Clarify how ETF treats specific situations under the IRC to ensure WRS compliance.*

These changes are consistent with current statutory requirements.

- Amending the definition of “maximum voluntary contribution” to clarify that ETF will adjust the amounts according to the limits set by the Internal Revenue Service (IRS) and which are changed periodically.
- Amending s. ETF 10.65 regarding the refund of excess contributions to clarify that refunds will be processed as required by the IRS.
- Clarifies that ETF will not violate section 503(b) of the IRC regarding prohibited transactions.
- Clarifies that ETF is maintained for the exclusive benefit of participants and their beneficiaries, as required by the IRC.

#### *Summary of, and comparison with, existing or proposed federal statutes and regulations*

This rule complies with the IRS, IRS regulations and other requirements. The rules are written to ensure continued compliance with these laws, regulations and requirements.

#### *Comparison with rules in adjacent states*

Please see attached Fiscal and Economic Impact Analysis.

**Summary of factual data and analytical methodologies**

The proposed rule is intended to clarify ETF’s rules regarding compliance with the IRC. ETF worked closely with its outside tax counsel to develop the proposed rule.

**Accuracy, integrity, objectivity and consistency of data**

The present rule changes were a result of recommendations from ETF’s outside tax counsel and as required to maintain compliance with the internal revenue code. ETF conducted analysis with integrity in an accurate, objective, and consistent manner in accordance with its fiduciary responsibilities to its members.

**Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis**

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

**Effect on Small Business**

There is no effect on small business.

**Proposed Effective Date**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.

**Fiscal Estimate**

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

**Agency Contact Person**

Mary Alice McGreevy, Compliance Officer, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Phone: 608-267- 2354; E-mail: [maryalice.mcgreevy@etf.wi.gov](mailto:maryalice.mcgreevy@etf.wi.gov).

<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Amend ETF 10.01(3i), 10.65 and create ETF 10.85 and 20.0251 regarding compliance with the Internal Revenue Code.		
Subject		
Internal Revenue Code compliance.		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
This rule-making is needed to amend the existing rules and create new rules to clarify how the Wisconsin Retirement System complies with the Internal Revenue Code.		
Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
There is no economic and fiscal impact on small business, business sectors, public utility rate payers, local governmental units and the state’s economy as a whole. The rule change addresses the need to clarify how the Wisconsin Retirement System complies with the Internal Revenue Code.		

<b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>
The rule language more accurately reflects tax requirements under IRC §§ 401 (a) and 415. The agency does not see alternatives to achieving the policy goal of the rule amendments.
<b>Long Range Implications of Implementing the Rule</b>
There are no long range economic or fiscal impacts of the rule.
<b>Compare With Approaches Being Used by Federal Government</b>
The proposed rule amendments are required to maintain written plan document compliance with federal tax requirements under IRC §§401 (a) and 415. Therefore the goal of the rule amendment is to more accurately reflect current legal requirements under the federal government.
<b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b>
Illinois — The Illinois Pension Code provides comparable provisions regarding compliance of the public employee pension system with the Internal Revenue Code.
Iowa — The Iowa Public Employees' Retirement System is governed by Iowa Code Chapter 97(B) and Chapter 495 of the Iowa Administrative Rules. These laws and rules provide comparable provisions regarding compliance of the public employee pension system with the Internal Revenue Code.
Michigan — Chapter 38 of the Michigan Statutes contain some provisions that are comparable regarding the State Employees' Defined Benefit Pension Plan compliance with the Internal Revenue Code.
Minnesota — Chapters 352 to 356A of the Minnesota Statutes contain some provisions that are comparable regarding compliance of the Public Employees' Retirement Association Defined Benefit Pension Plan with the Internal Revenue Code.

## Notice of Hearing

### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

#### **CR 13-005**

(DNR # ER-19-10)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Wisconsin Stats, the Department of Natural Resources will hold a public hearing to discuss revisions to Chapter NR 18, Wisconsin Administrative code on Wisconsin's falconry rules related to governing the sport of falconry, on the date and at the time and location listed below.

#### Hearing Information

**Date:** Tuesday, February 12, 2013  
**Time:** 6:00 p.m. until 8:00 p.m.  
**Location:** Fitchburg DNR Service Center  
 3911 Fish Hatchery Road  
 Fitchburg, WI 53711

A public hearing will be held to discuss revisions to Wisconsin's falconry administrative code, ch. NR 18. The hearing will be held in the Gathering Waters Room of the Fitchburg Service Center, and the presiding hearing officer will be DNR Attorney Michael Kowalkowski. There will be *Live Meeting* availability for those who are unable to attend in person.

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon

request. Contact Sumner Matteson in writing at the Department of Natural Resources, Bureau of Endangered Resources (ER/6), 101 S Webster, Madison, WI 53707; by E-mail to [Sumner.matteson@wisconsin.gov](mailto:Sumner.matteson@wisconsin.gov) or by calling (608) 266-1571.

For more information or to request a *Live Meeting* link, please contact Sumner Matteson at the addresses or numbers above.

#### Availability of the Proposed Rules and Submitting Comments

The proposed rule and supporting documents may be reviewed and comments can be electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rule and supporting documents may also be obtained from Sumner Matteson, Department of Natural Resources, Bureau of Endangered Resources (ER/6), 101 S. Webster St, Madison, WI, 53703, by calling (608) 266-1571 or by contacting [Sumner.matteson@wisconsin.gov](mailto:Sumner.matteson@wisconsin.gov) and at [www.legis.state.wi.us/rsb/code.htm](http://www.legis.state.wi.us/rsb/code.htm) (Wisconsin Administrative Register).

Written comments on the proposed rule may be submitted via U.S. mail or email to Sumner Matteson at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until February 12, 2013.

#### Analysis Prepared by the Department of Natural Resources

Chapter NR 18 is being revised to comply with federal regulations governing the sport of falconry. The US Fish and Wildlife Service will no longer issue a permit to individuals engaged in falconry; permits will be issued by states with oversight by the Service.

**Statutes interpreted**

Section 29.319, Wis. Stats., Falconry Regulation.

**Statutory authority**

Sections 29.319, Wis. Stats.

**Explanation of agency authority**

The department holds authority under Wis. Stat. s. 29.319 to regulate falconry and the taking of raptors for falconry. The department is also authorized to establish rules for falconry, which is administrative code ch. NR 18. The department may provide permits to both Wisconsin residents and non-residents. The department is also authorized to charge a fee for these permits and to deposit these fees in the Endangered Resources Fund, s. 20.370 (1) (fs) Wis. Stats.

**Related statute or rule**

Chapter NR 18, governing the sport of falconry.

**Statutory section Title [or subject]**

29.014(1)	Rule making for Ch. 29
29.039	Non game species
169.04	Possession of live wild animals.
169.05	Taking of wild animals.
169.06	Introduction, stocking, and release of wild animals.
169.07	Exhibition of live wild animals.
169.10	Sale and purchase of live wild animals.
227.11 (2)	Rule making authority.

**Plain language analysis**

The proposed rule defines and clarifies different falconry terms and conditions.

**Summary of, and comparison with, existing or proposed federal regulations**

The U.S. fish and wildlife service will no longer issue a permit to individuals engaged in the sport of falconry. Pursuant to 50 CFR 21.29(b), permits will be issued by states with oversight provided by the Service. The Service has formulated revisions as to how the sport of falconry is to be conducted and supervised by the states. The proposed rule makes the revisions to current code to ensure compliance with federal rules by January 1, 2014.

**Comparison with rules in adjacent states**

All states must comply with federal rules pertaining to the sport of falconry by January 1, 2014.

**Summary of factual data and analytical methodologies**

A total of 98 resident falconers and approximately 10 or fewer non-resident falconers will be affected by the proposed rule.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report**

This rule update applies only to falconers. The proposal does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The department has determined that this rule will not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or overall economic competitiveness of the state. No fiscal impacts are expected for the public utility rate payers or local government units. This determination was made after conducting an economic impact analysis and soliciting comments beginning on March 6, 2012 for 14 days. The department requested comments from the Wisconsin Falconry Association (WFA). Comments from WFA, approving the economic impact analysis were received in a letter from WFA dated May 11, 2012.

**Effect on Small Business, Including How the Rule Will Be Enforced**

None.

Pursuant to ss. 227.114 and 227.137, Wis. Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses. The department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

**Environmental Impact**

The department has made a preliminary determination that this action does not involve a significant adverse environmental effect and does not need an environmental analysis under ch. NR 150, Wisconsin Administrative Code.

**Agency Contact Person**

Sumner Matteson, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921. (608) 266-1571, email: [sumner.matteson@wisconsin.gov](mailto:sumner.matteson@wisconsin.gov).

STATE OF WISCONSIN

DEPARTMENT OF ADMINISTRATION

DOA 2049 (R 07/2011)

**ADMINISTRATIVE RULES  
FISCAL ESTIMATE AND  
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original     Updated     Corrected

Administrative Rule Chapter, Title and Number

Admin Code Chapter NR 18, Falconry

Subject

Revisions to the Falconry Permitting Rules



Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		20.370 1 (fs)
Fiscal Effect of Implementing the Rule		
<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>The U.S. Fish and Wildlife Service will no longer issue a permit to individuals engaged in the sport of falconry. Permits will be issued by states with oversight provided by the Service. The Service has formulated revisions as to how the sport of falconry is to be conducted and supervised by the states. The proposed rule makes the revisions to current code to ensure compliance with federal rules by January 14, 2014.</p>		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
<p>The total impact of this rule is indeterminate. The proposed rule does not change existing code regarding permit fees for approximately 100 resident falconers and fewer than 10 nonresident falconers. The resident falconer pays \$75 for a 3-year falconry permit, and a nonresident falconer pays \$100 annually for a nonresident raptor trapping permit. The updated rule does specify that permit holders with hybrid raptors must have two telemetry radio transmitters attached to the hybrid raptors. Currently, there are seven hybrid permit holders in the state. The radio telemetry transmitter costs \$185.00/unit (two needed per rule) and a radio telemetry receiver costs \$670.00. It is estimated this provision could cost each of the seven permit holders \$1,040 for the telemetry radio purchases. The updated rule also mentions an ISO-compliant microchip; this is mentioned as optional in the rule. It is estimated that a microchip and the related scanner could cost approximately \$220.00. The number of falconers who may use this option is not known, but it is estimated to be no more than a dozen. It is estimated that there will be a slight increase in time spent by permit holders to meet reporting requirements, but it is not possible to estimate an exact cost related to the potential workload increase.</p> <p>This rule update applies only to falconers. The proposal does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The department has determined that this rule will not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or overall economic competitiveness of the state. No fiscal impacts are expected for the public utility rate payers or local government units.</p>		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Allows the State of Wisconsin to take over control of regulating the sport of falconry.		
Long Range Implications of Implementing the Rule		
Will provide a consistent framework for regulating the sport of falconry.		
Compare With Approaches Being Used by Federal Government		
The U.S. Fish and Wildlife Service formerly provided permits to individuals engaged in the sport of falconry. Permits now will be issued by states with oversight provided by USFWS.		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
All states need to comply with USFWS revisions to the sport of falconry.		
Name and Phone Number of Contact Person		
Sumner Matteson (608) 266-1571		

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## Submittal of Proposed Rules to Legislature

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*Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.*

### **Agriculture, Trade and Consumer Protection** **CR 12-028**

**(DATCP Docket # 11-R-12)**

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting a rule for legislative committee review, pursuant to s. 227.24 (1) (e) 1g., Stats. The proposed rule revises ch. ATCP 161, relating to the Grow Wisconsin Dairy Producer Grant and Loan Program.

This rule was approved by the Governor on November 8, 2012.

### **Agriculture, Trade and Consumer Protection** **CR 12-036**

**(DATCP Docket # 12-R-04)**

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting a rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises ch. ATCP 127, relating to telephone solicitations; no-call and no-text list.

This rule was approved by the Governor on November 30, 2012.

### **Financial Institutions — Banking** **CR 12-034**

The Department Financial Institutions, Division of Banking proposes an order to create ch. DFI—Bkg 78, relating to auto title loans.

On January 11, 2013 the Department of Financial Institutions, Division of Banking submitted Clearinghouse Rule 12-034 to the Chief Clerk of each house of the Legislature.

This rule was approved by the Governor on December 13, 2012.

### **Financial Institutions — Banking** **CR 12-035**

The Department of Financial Institutions, Division of Banking proposes an order to repeal ss. 75.02 (1) and (2), and

75.10 (6); amend ss. DFI—Bkg 75.01 (3), 75.02 (intro), 75.03 (3) and (3) (c), 75.05 (4), 75.06 (2), 75.07 (a), 75.08 (4) and (4) (b), and 75.10 (3) (a) 3.; repeal and recreate s. 75.08 (1); and create ss. 75.01 (9), 75.03 (5), (6) and (7), 75.06 (5) and 75.08 (d), relating to payday lending.

On January 11, 2013 the Department of Financial Institutions, Division of Banking submitted Clearinghouse Rule 12-035 to the Chief Clerk of each house of the Legislature.

This rule was approved by the Governor on December 13, 2012.

### **Natural Resources**

#### ***Environmental Protection—Wis. Pollution Discharge Elimination System, Chs. NR 200—***

**CR 12-027**

**(DNR # WT-23-11)**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The proposed rule revises ch. NR 208, relating to sanitary sewer overflows and bypasses.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 549 on September 30, 2001, was sent to the LRB prior to June 8, 2011, the effective date of Act 21.

### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1—***

**CR 12-029**

**(DNR # FR-19-11)**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The proposed rule revises Ch. NR 47, relating to the Wisconsin Forest Landowner Grant Program (WFLGP).

The Governor approved this rule on January 2, 2013.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **January 2013**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

#### Educational Approval Board

**Ch. EAB 1**

EAB 1.01 (23)

**Ch. EAB 3**

EAB 3.01 (6) (a)

**Ch. EAB 6**

EAB 6.01 (intro.)

EAB 6.02 (1)

EAB 6.03 (1)

EAB 6.04 (1)

**Ch. EAB 8**

EAB 8 (note no. 2)

**Ch. EAB 10**

EAB 10.02 (4)

EAB 10.04 (1)

**Ch. EAB 11**

EAB 11.04 (1)

#### Natural Resources

**Ch. NR 809**

NR 809.04 (59)

NR 809.332 (1) (b)

NR 809.336 (1) (a)

NR 809.541 (4) (b)

NR 809.66 (1) (intro.)

**Ch. NR 820**

NR 820.30 (1) (a) (note)

**Ch. NR 845**

NR 845.06 (1) (c)

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 90.** Relating to a Special Election for the Ninety–Eighth Assembly District. **(December 17, 2012)**

**Executive Order 91.** Relating to a Proclamation Declaring a State of Emergency in Response to Severe Winter Weather. **(December 19, 2012)**

**Executive Order 92.** Relating to the Closure of State Government Offices to the Public Due to Severe Winter Weather conditions. **(December 19, 2012)**

**Executive Order 93.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff as a Mark of Respect for Fire Chief Philip Mortensen of the Brooklyn Area Fire and EMS Protection District. **(December 27, 2012)**

**Executive Order 94.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff as a Mark of Respect for Police Officer Jennifer Sebena of the Wauwatosa Police Department. **(December 27, 2012)**

**Executive Order 95.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff in the City of Oconto as a Mark of Respect for Edward P. Young, Long–Time County Board Supervisor and City Council Alderperson. **(January 4, 2013)**



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## Public Notices

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### Department of Health and Family Services

#### *Medicaid Reimbursement for Inpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Critical Access Hospitals, Major Border Status Hospitals, Non State Public, Psychiatric Hospitals, and Rehabilitation Hospitals State of Wisconsin Medicaid Payment Plan for State Rate Year 2013*

The State of Wisconsin reimburses hospitals for inpatient hospital services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medicaid or Medical Assistance.

Under the current Medicaid Inpatient Hospital State Plan, effective February 1, 2013, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, DRG payment system adjusted by case mix that assigns each hospital a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a pre-determined trimpoint. Payments are adjusted as necessary to ensure budget compliance using a statewide base rate as the starting point of the rate setting process. Non State Public, Psychiatric, and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance.

The following will be new for 2013 and not reflected in the 2011-2012 rate methods:

- The base rate will be updated to ensure inpatient hospital spending is properly aligned with the Medicaid budget.
- The trimpoint which is used to determine outlier payments will increase for all hospitals reimbursed under the DRG methodology by 2.95% for hospitals with over 100 beds and increased to \$10,000 for hospitals with less than 100 beds. The previous trimpoint for hospitals with over 100 beds was \$32,337 and for hospitals with less than 100 beds was \$5,389. The new trimpoints are outlined below. Please note, the increase is not applicable to Critical Access Hospitals or hospitals reimbursed under a per diem methodology.

<u>Type of Hospital / Bed Size</u>	<u>—Trimpoint Amount—</u>	
	<u>Less than 100 Beds</u>	<u>100 Beds or Greater</u>
General Medical & Surgical Hospitals	\$10,000	\$33,291
Critical Access Hospital	\$300	N/A

- For hospitals without an audited cost report who have not filed a previous appeal with the department in prior rates years, DHS will use the statewide average to provide a provider specific adjustment (capital and graduate medical education) instead of using unaudited cost report data. Rates are subject to a final reconciliation once the unaudited cost report becomes audited.

- DRG Codes 9990 (Heart/Lung Transplant) and 9991 (Pancreas Transplant) will be eliminated effective February 1, 2013.

- Payment rates for Long-Term Ventilator Services, Brain Injury Care (Neurobehavioral Program Care, and Coma-Recovery Program Care) will be calculated with a cost-based methodology and will be updated for effective date February 1, 2013.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

#### **Proposed Change**

It is estimated that these changes will have no material impact on projected annual aggregate Medicaid expenditures in state fiscal year 2013. DHS maintains the same hospital budget approved by the Legislature.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be February 1, 2013.

#### **Copies of the Proposed Change**

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

**Regular Mail**

Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53701-0309

**State Contact**

Krista Willing, Deputy Director  
Bureau of Fiscal Management  
(608) 266-2469 (phone)  
(608)266-1096 (fax)  
[KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

**Written Comments**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is [KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

**Department of Health and Family Services*****Medicaid Reimbursement for Outpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Critical Access Hospitals, Major Border Status Hospitals, Non State Public, Psychiatric Hospitals, and Rehabilitation Hospitals State of Wisconsin Medicaid Payment Plan for State Rate Year 2013***

The State of Wisconsin reimburses hospitals for outpatient hospital services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

Under the current Medicaid Outpatient Hospital State Plan, effective February 1, 2013, the rate setting methodology for Acute Care, Psychiatric, Rehab, and Children's Hospitals is a provider specific, cost-based rate per visit. Out of state and new hospitals without cost reports are paid at a statewide average percent of charges.

The following changes will be contained in the February 1, 2013 outpatient hospital state plan amendment:

- The budget neutrality factor will be updated to ensure outpatient hospital spending is properly aligned with the Medicaid budget.
- DHS will implement a lower limit for outpatient per visit rates for providers with low volume and unstable rates.
- Effective April 1, 2013, outpatient hospital services for all hospitals will be reimbursed using an Enhanced Ambulatory Patient Grouping (EAPG) reimbursement methodology. Additional public notices regarding this will be made available at a later time.

**Proposed Change**

It is estimated that these changes will have no material impact on projected annual aggregate Medicaid expenditures in state fiscal year 2013. DHS maintains the same hospital budget approved by the Legislature.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be February 1, 2013.

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